

**COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND  
SUBSTANCE ABUSE SERVICES**

**Rules Committee Minutes**

Holiday Inn-North,  
2805 Highwoods Blvd. • Raleigh, NC 27604

**Thursday, April 13, 2006**

**Attending:**

**Commission for MH/DD/SAS Rules Committee Members:** Pender McElroy, Floyd McCullouch, Anna Scheyett, Lois Batton, Dorothy Crawford, Laurie Coker, Pearl Finch, Mazie Fleetwood, Ann Forbes, George Jones, Martha Martinat, Connie Mele, Emily Moore, Ellen Russell, Clayton Cone, Tom Ryba, Fredrica Stell, and Jerry Ratley,

**Ex-Officios:** Sally R. Cameron, Janet Schanzenbach, Joe Donovan, Bob Hedrick

**Commission for MH/DD/SAS Committee Members Excused:** None

**DMH/DD/SAS Division Staff:** Steven Hairston, Denise Baker, Cindy Kornegay, Gerald Peacock, Vanessa Holman

**Others:** None

**Handouts:**

Mailed:

1. Agenda for April 13, 2006 Rules Committee meeting
2. January 19, 2006 Rules Committee Draft Minutes
3. Proposed Amendment of Waiver of Licensure Rules 10A NCAC 27G .0813
4. Proposed Adoption of Rules 10A NCAC 28I .402 Firearms and Repeal of Rule 10A NCAC 28I .0401 Firearms
5. Proposed Repeal of Secretary's Rules: 10A NCAC 29A Services for Eligible Assaultive and Violent Children and Adolescents (Willie M.), 10A NCAC 29B Thomas S. Services, and 10A 29D .0100 Carolina Alternatives
6. Proposed Repeal of Commission Rules: 10A NCAC 29D .0200 Single Portal of Entry and Exit Designation and 10A NCAC 29D .0300 Designation of Area Mental Health, Mental Retardation and Substance Abuse Authorities Catchment Areas
7. Report on the New Federal Methamphetamine Law
8. Rule Reference Material

**Additional Information**

Updated Commission Roster

Directions to the Holiday Inn-Raleigh North at Highwoods

**Call to Order:**

Co-Chairman, Anna Scheyett called the meeting to order at 9:30 a.m. She welcomed all attendees and asked Commission members, Commission Ex-Officios, and Division staff to introduce themselves.

Ms. Scheyett requested a moment of silence for troops in Iraq and Hurricane Katrina victims.

**Approval of Minutes:**

Ms. Scheyett asked for discussion concerning the draft January 19, 2006 Rules Committee minutes. There was none.

*Upon the motion, second, and unanimous vote the Committee approved the January 19, 2006 Rules Committee minutes without change.*

**Proposed Amendment of Waiver of Licensure Rules 10A NCAC 27G .0813**

Steven Hairston, Chief, Operations Support Section, DMH/DD/SAS presented the proposed amendment of the Waiver of Licensure Rules, 10A NCAC 27G .0813. Changes in G.S. 150B, Article 3 require contested cases to go directly to the Office of Administrative Hearings. The proposed amendment updates the rule to conform to statutory requirements.

Ms. Scheyett asked if the Section of rules proposed for deletion in Paragraph (f) (10A NCAC 26A .0200) needed to be amended. Cindy Kornegay informed the Committee that Subchapter 26A needs extensive revision and the Division plans to present proposed amendments at a later date.

Bob Hedrick asked if the term “area program” should be changed to “area authority or county program” throughout the rule in order to be consistent with current terminology and if “governing board” should be changed to “governing body”.

*Upon the motion, second, and unanimous vote the Rules Committee approved with the changes recommended the proposed amendment of rule 10A NCAC 27G .0813 to be forwarded to the full Commission for initial review and approval for publication.*

**Proposed Repeal of Secretary’s Rules: 10A NCAC 29A Services for Eligible Assaultive and Violent Children and Adolescents (Willie M.), 10A NCAC 29B Thomas S. Services, and 10A 29D .0100 Carolina Alternatives**

Cindy Kornegay, Rulemaking Coordinator for MH/DD/SAS presented the proposed repeal for 10A NCAC 29A, 10A NCAC 29B, and 10A 29D .0100. The proposed repeals are necessary to update rules to reflect current services. The specific programs associated with the Carolina Alternatives waiver, Thomas S. and Willie M. services are no longer in existence. The Secretary has rulemaking authority for the subject matter of the proposed repeals. They were presented to the Rules Committee for information and comment.

Bob Hedrick asked if there are rules or statutes that address continuing to meet the needs of the disability populations that led to the Thomas S. and Willie M. lawsuits. Ms. Kornegay stated that there has been funding that has been included in appropriations legislation since the lawsuits were settled.

Mazie Fleetwood stated that in the terms of the lawsuit settlements, the state was required to show a continuing effort to serve individuals of the Willie M. and Thomas S. populations and that is why special provisions have been included in appropriations legislation.

**Proposed Repeal of Commission Rules: 10A NCAC 29D .0200 Single Portal of Entry and Exit Designation and 10A NCAC 29D .0300 Designation of Area Mental Health, Mental Retardation and Substance Abuse Authorities Catchment Areas**

Cindy Kornegay also presented the proposed repeal of 10A NCAC 29D .0200 and 10A 29D .0300. The proposed repeals are necessary to update rules to reflect current practices. Mental health reform legislation, Session Law 2001-437 repealed the Commission’s rulemaking authority for these rules.

Ellen Russell, Bob Hedrick and other members of the Committee expressed concern over the loss of some of the benefits of single portal. The loss of data concerning the number and needs of people who are on waiting lists for DD services was given as a specific example.

Pender McElroy asked the difference between single portal of entry and the uniform portal of entry. Mr. McElroy was informed that single portal of entry only addressed developmental disabilities. Single portal included very specific tracking mechanisms that area programs used to know how many individuals were waiting for specific services. Single portal required the area

program to use an interagency council to assist in planning for the needs of individuals with developmental disabilities. The concept of single portal was replaced by uniform portal in the mental health reform legislation, Session Law 2001-437. Uniform portal applies to all disabilities and is intended to include the idea of “no wrong door” of entry into the system.

*Upon the motion, second, and unanimous vote the Rules Committee approved the proposed repeal of 10A NCAC 29D .0200 to be forwarded to the full Commission with recommendation for repeal. Also included in the motion was a recommendation to the full Commission asking that the Chairman write a letter to the Secretary of DHHS and the Joint Legislative Oversight Committee on MH/DD/SAS on behalf of the Commission expressing concern regarding the loss of waiting list data previously captured by single portal and requesting that a mechanism be incorporated into the uniform portal system to capture this data for all of the disability populations.*

*Also upon the motion, second and unanimous vote the Rules Committee approved the proposed repeal of 10A NCAC 29 D .0300 to be forwarded to the full Commission with recommendation for repeal.*

#### **Proposed Adoption of Rule 10A NCAC 28I .402 Firearms and Repeal of Rule 10A NCAC 28I .0401 Firearms**

Steven Hairston announced Laura White of State Operated Services had been called to John Umstead Hospital and would be unable to present the proposed adoption and repeal. Mr. Hairston presented in Ms. White’s absence. The proposed adoption and repeal is necessary to update requirements concerning firearms and State facilities. The current rule was adopted in 1976 under the rulemaking authority of the Commission for MH/DD/SAS. Session Law 1985-589 repealed the previous MH statutes codified in G.S. 122 and created a new chapter G. S. 122C. G.S 122C-112.1(a) (10) states the Secretary shall operate State facilities and adopt rules pertaining to their operation. It is necessary for the Commission to repeal the current rule under the Commission authority, so that the Secretary may adopt a new rule concerning firearms and State facilities. The proposed adoption was presented to the Rules Committee for information and comment.

Mr. McElroy asked how this rule came to the forefront since there has been no action taken on it since its adoption 30 years ago. Mr. Hairston explained there had been an incident at Cherry Hospital where a patient gained possession of an escorting officer’s gun. The patient shot a hospital employee and then committed suicide. The incident prompted a review of the current rule.

Tom Ryba stated that the proposed rule allows the law enforcement officer to decide whether or not to have a firearm. He stated he did not think it is a good idea for officers to have firearms in patient care areas.

The Committee requested that a representative from the Attorney General’s Office attend the full Commission meeting to discuss the proposed rule and explain the rationale for the proposed language.

*Upon the motion, second, and unanimous vote the Rules Committee approved the proposed repeal of rule 10A NCAC 28I .401 to be forwarded to the full Commission with recommendation for repeal.*

#### **Report on the New Federal Methamphetamine Law**

Gerald Peacock, Unit Manager, Justice Innovations Team, DMH/DD/SAS presented a report on the new federal methamphetamine law which became effective on March 9, 2006. The new federal law creates a new category for all cold medicine containing pseudoephedrine or ephedrine

under the federal Controlled Substances Act entitled “scheduled listed chemical products.” Mr. Peacock presented the major components of the new federal law and compared them with the requirements of the North Carolina law that became effective in September. Specific information concerning the two statutes is contained in the summary included in the mailed handouts for the April 13, 2006 Rules Committee meeting. The summary is titled, New Federal Methamphetamine Law to Further Change the Landscape on Selling Cold Medicine in North Carolina. The summary comparison of NC and Federal law is found in Table 1, attached to these minutes.

Ms. Scheyett asked if the federal law supercedes NC law. Mr. Peacock stated only when the federal law is more stringent than the NC law.

Mr. Hedrick asked for clarification concerning G.S 90-113.59 that states “The Commission for MH/DD/SAS shall develop training and education programs...” and the handout that states “employees involved in the sale of pseudoephedrine products be trained in a program conducted by or approved by the Commission.” Mr. Hedrick stated there is a big difference between approving a training program and conducting a training program. Mr. Peacock and Mr. Hairston clarified that at the November 14, 2005 Commission meeting, training guidelines proposed by the NC Retail Merchants Association were approved by the Commission due to the time constraints associated with the effective date of the legislation. An emergency conference call was held with the Commission leadership to develop a certification form stating employees of NC pharmacies have received training as required. Mr. McElroy asked that the training guidelines be presented again at the full Commission meeting in May 2006.

Mr. McElroy asked how we are ensuring that the small general stores are being trained in these laws. He also asked if the NC Retail Merchants Association include all stores that sell pseudoephedrine products. Mr. Peacock stated that the Attorney’s General’s Office has been contacted about this issue but has not provided a response to date. He further stated the federal law does not direct the Commission to mandate training to non-pharmacy retailers. Jerry Ratley stated the Commission has no obligation to regulate the sale of gel caps, liquids, liquid capsules, gel capsules or pediatric products. Mr. McElroy quoted the G.S. 90-113.51(b) definition of a retailer, stating the definition includes entities other than pharmacies. He requested that a representative from the Attorney General’s Office attend the full Commission meeting in May so there can be a more thorough discussion of the requirements of the legislation and the Commission’s responsibilities.

### **Other Business**

Ms. Scheyett stated that she has received calls concerning Psychosocial Rehabilitation or clubhouse programs. Under the new service definition a change in documentation requires daily documentation. Previously documentation was required once a month. A program that writes 150 notes each month will increase to approximately 2200 notes each month. This type of documentation will have significant implications on staff time and may reduce the time they spend working with consumers. Ms. Scheyett wanted to inform the Commission of this issue. Sally Cameron reported that the Coalition for Persons Disabled by Mental Illness was also apprised of this concern, is concerned as well, and is exploring the issue. Steven Hairston stated that he will forward this information to Flo Stein and keep the Commission posted on information received.

Martha Martinat thanked Pender McElroy for the letter he wrote to Governor Easley concerning the approval of the residential treatment rules. Mr. McElroy stated that the Commission should thank the Governor and he will draft a thank you letter.

There was no public comment.

**There being no further business, the meeting was adjourned at 11:40 a.m.**

